

Amendment No. 1 to HB0142

Lundberg
Signature of Sponsor

AMEND Senate Bill No. 1*

House Bill No. 142

by deleting all language after the caption and by substituting instead the following:

WHEREAS, pursuant to language proposed to be added to Article VI, Section 3, of the Constitution of Tennessee by Senate Joint Resolution 710 in 2012 and Senate Joint Resolution 2 in 2013, and which was ratified by the people at the November 4, 2014, general election, this act provides for an orderly procedure for the appointment, confirmation, and retention of the judges of the supreme court, the court of appeals, and the court of criminal appeals, as required by Article VI, Section 3; and

WHEREAS, Article II, Sections 1 and 2, of the Tennessee Constitution explicitly incorporate the doctrine of separation of powers, which requires each branch of government to respect the powers and prerogatives of the other coordinate branches of government; and

WHEREAS, the Constitution of Tennessee, following the ratification of Amendment Two by the people of Tennessee on November 4, 2014, vests in the governor the exclusive authority to appoint judges; and

WHEREAS, the role of the general assembly, following the ratification of Amendment Two by the people of Tennessee on November 4, 2014, is to provide an important check and balance on the governor's appointment authority through the exercise of its prerogative to reject a gubernatorial appointee found by the general assembly to be unqualified for judicial office; and

WHEREAS, the general assembly must be accorded a meaningful opportunity to exercise its authority either to confirm or to reject a gubernatorial appointee; and

WHEREAS, persons appointed to judicial office by the governor are entitled to the presumption that they meet the constitutional and statutory requirement for the office to which

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they have been appointed and that, based on their education and experience, they are qualified to hold the office to which the governor has appointed them; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 5, Part 1, is amended by adding the following new section:

2-5-107.

This part shall not apply to a retention election in which a judge of the supreme court, the court of appeals, or the court of criminal appeals seeks election to fill the office to which the incumbent judge was appointed and confirmed. Title 17, chapter 4, part 1, shall govern such elections.

SECTION 2. Tennessee Code Annotated, Section 16-3-101(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Before appointment and confirmation from one (1) of the three (3) grand divisions, a judge must have been domiciled in the grand division from which the judge is appointed for at least one (1) year.

SECTION 3. Tennessee Code Annotated, Section 16-3-101(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) Each judge shall be at least thirty-five (35) years of age and shall, before appointment and confirmation, have been a resident of the state for at least five (5) years.

SECTION 4. Tennessee Code Annotated, Section 16-4-102, is amended by deleting the section in its entirety and by substituting instead the following:

16-4-102.

(a) The court of appeals shall be composed of twelve (12) judges, of whom no more than four (4) shall reside in the same grand division of the state. Each judge shall be at least thirty (30) years of age, shall have been a citizen and resident of the state for at least five (5) years, and shall have been domiciled in the applicable grand division for at least one (1) year, prior to confirmation. Each judge shall be licensed to practice law in this state.

(b) The judges of the court of appeals shall be appointed and confirmed for a full term of eight (8) years. They shall face a retention election at the end of the full eight-year term at the regular judicial election held in this state for the judges of the other courts of record.

(c) The oaths of office of the judges of the court of appeals shall be filed and entered on the minutes of the court in the particular grand division from which the judge has been appointed and confirmed or subsequently elected. The oath shall likewise be filed and entered on the records of the office of secretary of state at Nashville.

SECTION 5. Tennessee Code Annotated, Section 16-5-102, is amended by deleting the second sentence and by substituting instead the following:

Each judge shall be at least thirty (30) years of age and shall have been a citizen and resident of the state for at least five (5) years and domiciled in the applicable grand division for at least one (1) year, prior to confirmation.

SECTION 6. Tennessee Code Annotated, Section 17-1-103, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The judges of the supreme court, the court of appeals, and the court of criminal appeals shall be elected by the qualified voters of the state at large in a retention election conducted in accordance with chapter 4, part 1 of this title.

(b) The chancellors, circuit court judges, criminal court judges, and judges of any

other state trial court of record shall be elected by the qualified voters of the respective judicial districts, as provided in the general election law in title 2.

SECTION 7. Tennessee Code Annotated, Section 17-1-301, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) Whenever a vacancy occurs in the office of a chancellor, circuit court judge, criminal court judge, or judge of any other state trial court of record, the governor shall appoint a qualified person to fill the vacancy.

(2) The term of the person appointed to fill the vacancy shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

(3) At the next regular August election occurring more than thirty (30) days after the vacancy occurs, the qualified voters of the district shall elect a qualified person to fill the remainder of the unexpired term, as provided in the general election law in title 2.

(4) For the purpose of this subsection (a), a vacancy shall be deemed to exist if, prior to September 1 following a regular August election, the duly elected successor to any judicial office becomes unavailable to serve because of death or other disqualifying event.

(b) If a vacancy occurs during the term of office of a judge of the supreme court, the court of appeals, or the court of criminal appeals, the governor shall appoint a qualified person to fill the vacancy. The governor's appointee shall be confirmed and elected in accordance with chapter 4, part 1 of this title.

SECTION 8. Tennessee Code Annotated, Section 17-1-302, is amended by deleting the section in its entirety.

SECTION 9. Tennessee Code Annotated, Section 17-4-101, is amended by deleting the

section in its entirety and by substituting instead the following:

17-4-101.

(a) The governor shall appoint a qualified person to fill a vacant seat on the supreme court, the court of appeals, or the court of criminal appeals whenever:

(1) A vacancy occurs as a result of death, resignation, retirement, failure to be retained, or otherwise; or

(2) An incumbent judge of the supreme court, the court of appeals, or the court of criminal appeals fails to file with the state election commission a written declaration of candidacy or withdraws a declaration of candidacy within the deadlines established by § 17-4-106.

(b) The governor's appointee shall not take office until the appointee has been confirmed by the general assembly by vote or by default as provided for herein.

SECTION 10. Tennessee Code Annotated, Section 17-4-102, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-102.

(a) Promptly upon making an appointment to the supreme court, the court of appeals, or the court of criminal appeals, the governor shall provide written notice of the appointment to the chief clerk of the senate and the chief clerk of the house of representatives. The chief clerks shall refer the governor's notice of appointment to the appropriate standing committee of their house as provide by rule.

(b) Upon receipt of the notice of appointment, the standing committees shall consider the governor's appointee and shall make a recommendation to their respective houses regarding the confirmation or rejection of the appointee.

(c)

(1) To assist the standing committees in their work, the committee chairs may request the governor to provide the committee with any reports relating to

the appointee that the governor has received from the Tennessee bureau of investigation or from any other agency that has performed financial or criminal background investigations. Any such reports provided to the committee are confidential and shall not be open to public inspection pursuant to title 10, chapter 7.

(2) If the governor does not possess background reports concerning the appointee or has not provided a copy of these reports in a timely manner, the committee chairs may, in accordance with § 38-6-106(g), request the Tennessee bureau of investigation or other appropriate agencies either to provide a copy of any report relating to the appointee that has already been prepared or to perform a background investigation of the appointee for the committee's consideration. Any such report provided to the committee is confidential and shall not be open to public inspection pursuant to title 10, chapter 7.

(d) The standing committees may base their respective recommendations regarding an appointee on the information provided in accordance with subsection (c). The standing committees may, by a majority vote of their members, obtain additional information regarding the appointee and may, if warranted, conduct a hearing regarding the appointee.

(e) Following consideration of the governor's appointee, each committee shall, by majority vote, recommend to its respective house whether the appointee should be confirmed. The chair of each committee shall promptly send a written report of the committee's recommendation to the chief clerk of their respective house. The chief clerks shall furnish a copy of the committee's report to all the members of their respective houses.

(f) Upon receipt of the standing committees' recommendations, the general assembly shall meet in joint session for the purpose of voting either to confirm or to

reject the governor's appointee by the joint vote of both houses of the general assembly. The appointee shall be either confirmed or rejected by a majority of the members present and voting.

SECTION 11. Tennessee Code Annotated, Section 17-4-103, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-103.

(a)

(1) The general assembly shall vote either to confirm or to reject the governor's nominee within sixty (60) calendar days after the chief clerks' receipt of the governor's written notice of appointment.

(2) If the general assembly is in regular annual session when the chief clerks receive the governor's written notice of appointment, the sixty-calendar-day period shall begin to run immediately upon the receipt of the notice.

(3) If the general assembly is not in regular session when the chief clerks receive the governor's written notice of appointment, the sixty-calendar-day period shall begin to run when the annual legislative session reconvenes or the next annual session convenes, whichever is sooner.

(4) Calendar days occurring when the general assembly is not in regular session and unable to conduct legislative business will not be counted for the purpose of calculating the sixty-calendar-day period in subdivision (a)(1).

(b) If the general assembly fails either to confirm or to reject the governor's appointee within sixty (60) calendar days as required in subsection (a), then the appointee shall be confirmed by default as of the following calendar day, regardless of whether the general assembly is then in session.

SECTION 12. Tennessee Code Annotated, Section 17-4-104, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-104.

(a) An appointee who has been confirmed for a full eight-year term prior to September 1 on which the term begins shall be entitled to take the oath of office and to commence service on September 1 on which the term begins.

(b) An appointee who has been confirmed to fill a vacancy for an unexpired term shall be entitled to take the oath of office and to commence service immediately upon confirmation.

SECTION 13. Tennessee Code Annotated, Section 17-4-105, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-105.

(a) A judge who has been appointed and confirmed for a full eight-year term on the supreme court, the court of appeals, or the court of criminal appeals and who takes office on September 1 at the beginning of the eight-year term shall face a retention election at the next regular August election following the date the judge takes office.

(b) A judge who has been appointed and confirmed to fill a vacancy on the supreme court, the court of appeals, or the court of criminal appeals more than thirty (30) days prior to the next regular August election occurring at least two (2) years prior to the end of the eight-year term shall face a retention election for the remainder of the term as provided in § 17-4-106 at the next regular August election following confirmation.

(c) A judge who has been appointed and confirmed to fill a vacancy on the supreme court, the court of appeals, or the court of criminal appeals less than thirty (30) days prior to a regular August election shall face a retention election as provided in § 17-4-106 at the next regular August election occurring more than thirty (30) days following the judge's confirmation.

(d) All incumbent judges of the supreme court, the court of appeals, and the court of criminal appeals who intend to remain in office beyond the expiration of the

eight-year term shall face a retention election as provided in § 17-4-106 at the regular August election immediately preceding the end of the eight-year term.

(e) The eight (8) judges appointed in 2014 to fill vacancies on the supreme court, the court of appeals, and the court of criminal appeals whose names were not included on the regular August 2014 ballot shall, upon filing a timely written declaration of candidacy pursuant to § 17-4-106, face a retention election in the regular August election in 2016.

SECTION 14. Tennessee Code Annotated, Section 17-4-106, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-106.

(a) An incumbent judge of the supreme court, the court of appeals, or the court of criminal appeals who seeks to be retained in the office to which the incumbent judge was appointed and confirmed must qualify by filing with the state election commission a written declaration of candidacy to fill the full term or the unexpired term. The declaration must be filed not later than twelve o'clock (12:00) noon prevailing time on the first Thursday in January before the regular August election. A judge appointed and confirmed after the first Thursday in January in the same year as the regular August election must file the declaration no later than the first Thursday occurring at least one (1) full week after the judge's confirmation. After timely filing the declaration, any request by the candidate to withdraw must be filed with the state election commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing the declaration of candidacy.

(b)

(1) If the declaration of candidacy is timely filed, only the name of the candidate, without party designation, shall be submitted to the electorate in this state in the regular August election. Each county election commission of the

state shall cause the following to be placed on the ballot:

Shall (Name of Candidate) be retained in office as a Judge of the (Name of Court)?

Yes

OR

No

(2) If the declaration of candidacy is not timely filed, then:

(A) The judge's name shall not be submitted to the electorate,
and

(B) The governor shall fill the vacancy subject to confirmation by
the general assembly in accordance with this part.

(c)

(1) If a majority of those voting on the question vote to retain the
candidate, then the candidate is duly elected to the office and shall be given a
certificate of election.

(2) If a majority or one-half (1/2) of those voting on the question vote not
to retain the candidate, then a vacancy exists in the office as of September 1
following the regular August election. The governor shall fill the office subject to
confirmation by the general assembly in accordance with this part.

(3) A candidate who has been defeated in any retention election held
under this chapter is not eligible for reappointment to the seat for which the
candidate was defeated until one (1) regular August election has occurred
subsequent to the defeat.

(d) An incumbent judge on the supreme court, the court of appeals, or the court
of criminal appeals who does not file a declaration of candidacy for election within the
prescribed time, who withdraws as a candidate for election, or who is not retained in a

retention election shall continue to serve in office until the judge's successor has been appointed and confirmed. The governor shall fill the vacant office subject to confirmation by the general assembly in accordance with this part.

SECTION 15. Tennessee Code Annotated, Sections 17-4-107 through 17-4-120, are amended by deleting the sections in their entireties.

SECTION 16. Tennessee Code Annotated, Section 17-4-201, is amended by deleting the section in its entirety.

SECTION 17. Tennessee Code Annotated, Section 38-6-106, is amended by adding the following new subsection (g):

(g) In addition to the list of officials in subsection (b) who are authorized to request the director of the Tennessee bureau of investigation to conduct a background investigation concerning persons under consideration for appointment to a position of trust and responsibility, the chairs of the standing committees to which the governor's notice of appointment have been referred may request a background investigation of any gubernatorial appointee to the position of judge of the supreme court, court of appeals, or court of criminal appeals whose appointment will be considered by the committees as provided in § 17-4-102. Any report provided to the chair of the committee shall be treated as a confidential record that is not open to public inspection pursuant to title 10, chapter 7.

SECTION 18. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 19. Being deemed remedial legislation necessary to provide for a fair, orderly, and stable procedure for the appointment and confirmation of state judges, in the event of conflict between the provisions of this act and any other rule of law, statute, whether general

or specific, or regulation, the provisions of this act shall control.

SECTION 20. This act shall take effect upon becoming a law, the public welfare requiring it.